

FOREST LABORATORIES, INC.,

- against -

LEIF NISSEN,

Plaintiff,

Defendant.

Index. No.

DECLARATION OF ERIC M. AGOVINO

[illegible]

I ERIC M. AGOVINO, an attorney duly licensed to practice law in the Courts of the State of New York, declares the following facts under penalty of perjury:

1. I am an attorney admitted to practice before the Courts in the State of New York and the Southern District of New York. I submit this declaration in support of Plaintiff's motion for a temporary restraining order and preliminary injunction. No prior application has been made for the same or similar relief sought herein.

2. I am in-house intellectual property counsel for Forest Laboratories, Inc. (“Forest”). My responsibilities include consultation concerning all aspects of Forest’s vast intellectual property portfolio.

The Necessity for Emergency Relief

3. Briefly stated, and as set forth in more detail herein, Forest needs emergency and temporary injunctive relief because the Defendant is a known

cybersquatter who (i) is causing actual confusion in the marketplace by leasing the domain name “lexipro.com” to pay-per-click sites who direct consumers who are interested in LEXAPRO to rogue on-line pharmacies who are selling dangerous and unauthorized drugs bearing the name LEXAPRO throughout the United States and the World and (ii) has threatened in writing to transfer the domain name “lexipro.com” to owners of pornographic web sites abroad (outside of the jurisdiction of U.S. courts) unless Forest capitulates to his extortion.

Background Facts

4. Forest is a New York based pharmaceutical company that produces and markets drugs that treat a variety of conditions. Forest has well-established franchises in therapeutic areas of the central nervous system, cardiovascular, and respiratory systems.

5. Forest’s blockbuster product is the anti-depressant drug LEXAPRO. LEXAPRO has been prescribed for more than 15 million adults in the United States for the treatment of depression and generalized anxiety disorder (“GAD”) in adults. Currently, more than 19 million American adults suffer from depression and 4 million American adults suffer from GAD.

6. On December 22, 2000, Forest filed an intent-to-use application with the United States Patent and Trademark Office (“PTO”) for the mark LEXAPRO for “pharmaceutical preparations, namely antidepressants,” which means that Forest is entitled to presumptive use from that date forward.

7. Forest registered and obtained rights to the domain name “lexapro.com” on January 22, 2001.

8. Based on the success of pre-clinical and clinical trials, the safety and

efficacy of LEXAPRO was heavily touted in the press throughout 2001 as a blockbuster product, offering potency and efficacy not then available.

9. Forest submitted a new drug application with the United States Food and Drug Administration (“FDA”) on March 23, 2001, which was heavily touted in the press.

10. On January 25, 2002, after Forest had achieved significant press for LEXAPRO and after it had filed its intent-to-use application for LEXAPRO, the Defendant Mr. Leif Nissen registered and obtained rights to the domain name “lexipro.com.” “Lexipro” is a common misspelling for Forest’s LEXAPRO mark and, on information and belief, Mr. Nissen registered “lexipro.com” only because he sought to capitalize on the good will that LEXAPRO brand has obtained in the marketplace. On information and belief, Mr. Nissen has not made any legitimate use of the domain name, except to capitalize on the good will associated with the LEXAPRO product by leasing “lexipro.com” to pay-per-click sites, as set forth herein. Attached as Exhibit A is a true and correct copy of the registration information for the name “lexipro.com.”

11. On February 4, 2003, the PTO issued a federal registration for LEXAPRO (Reg. No. 2,684,432). Attached as Exhibit B is a true and correct copy of an on-line printout of the registration certificate for LEXAPRO.

12. Forest’s rights to the LEXAPRO mark are longstanding, strong and incontestable pursuant to 15 U.S.C. § 1065. Indeed, Forest’s LEXAPRO mark has become “famous” and is therefore entitled to an elevated degree of protection.

13. On or about August 1, 2007, it came to my attention through Forest’s marketing department that someone had registered and was making improper use of the domain name “lexipro.com.” In particular, “lexipro.com” was linked to, *inter alia*, a

number of on-line pharmacies that are making unauthorized sales of drugs that purport to be LEXAPRO, both in the United States and in other countries. These online and rogue pharmacies are engaging in willful patent infringement, trademark infringement, and other violations of Forest's valuable intellectual property. Even worse, the sale of unregulated drugs by rogue online pharmacies presents a well established public safety issue.

14. Forest's further investigation disclosed that "lexipro.com" is registered to an individual by the name of Leif Nissen, the Defendant in the present action. On August 1, 2007, Forest wrote to Mr. Nissen and requested that he cease and desist from his unlawful activities in connection with his use of the domain name "lexipro.com." Attached as Exhibit C is a true and correct copy of Forest's August 1, 2007 letter to Mr. Nissen.

15. On August 1, 2007, Mr. Nissen wrote back to me and falsely stated that he had the "lexipro.com" domain name before the Forest product LEXAPRO existed. Mr. Nissen also admitted to placing "lexipro.com" on a pay-per-click site called "Parked.Com." These pay-per-click sites collect advertising dollars each time someone clicks on an advertised site, who in turn provide a portion of those monies to those who own the particular domain names in question, like Mr. Nissen. Thus, when someone types "www.lexipro.com" as a web address the user thinks that he/she will locate sites that are sponsored by Forest in connection with the name LEXAPRO. Instead, the user is directed away from Forest's LEXAPRO brand and directed to a variety of rogue on-line pharmacies and other sites. Attached as Exhibit D is a true and correct copy of Mr. Nissen's August 1, 2007 electronic communication to me.

16. In Mr. Nissen's August 1, 2007 electronic communication, he offered to sell the "lexipro.com" domain name to Forest for \$10,000 or he would sell the name to offshore companies out of this Court's jurisdiction.

17. On or about August 14, 2007, outside trademark counsel send a cease and desist letter to the pay-per-click site "Parked.Com" and demanded that it cease providing services in connection with "lexipro.com." Attached as Exhibit E is a true and correct copy of Forest's August 14, 2007 letter to Parked.Com.

18. That same day, Parked.Com terminated its relationship with Mr. Nissen. Attached as Exhibit F is a true and correct copy of Parked.Com's electronic communication dated August 14, 2007 to Forest's outside counsel.

19. On August 14, 2007, Mr. Nissen wrote to me again via electronic communication, a true and correct copy of which is attached hereto as Exhibit G, and stated:

Well, you've gotten parked.com<<http://parked.com>> to stop running ads on the site. Being that you're being so reasonable, maybe I'll sell it to a webmaster in Pakistan who will put a porn site on it. Let's start being reasonable here before I do something stupid. There are 10+ domain parking companies if that's really the tactic you want to take.

20. On or about August 14, 2007, Mr. Nissen made true on his threat and displayed the "lexipro.com" domain name on another pay-per-click site called SEDO, a true and correct copy of which is attached as Exhibit H. This new site also links users to rogue on-line pharmacies that sell bootleg LEXAPRO. Both SEDO and Defendant Nissen continue to receive advertising dollars in connection with their improper activities.

21. Mr. Leif's activities as set forth above are significantly contributing to the well recognized public safety problem of rogue on-line pharmacies selling bootleg drugs to individuals who are not medically supervised. Mr. Leif's activities are also causing significant consumer confusion in the marketplace and causing irreparable damage to the LEXAPRO brand.


22. Forest requires the emergency relief requested herein because Mr. Leif is currently working with a pay-per-click site called SEDO and probably other companies that are misdirecting consumers interested in LEXAPRO to, inter alia, rogue on-line pharmacies, which is causing consumer confusion in the marketplace, damaging the good will associated with the mark LEXAPRO, and contributing to a significant threat to public health.

23. Unless the Court immediately enjoins Mr. Leif from transferring the domain name "lexipro.com," he will likely make good on his promise to sell it to a foreign "webmaster" for use in pornographic web sites, over which the Court has no jurisdiction or control.

24. Unless the Court immediately enjoins Mr. Leif from using the domain name "lexipro.com," consumers will continue to be confused over the source of goods that purport to be LEXAPRO, which will cause irreparable damage to the LEXAPRO mark, and will continue to cause a significant threat to the public safety and welfare.

25. Forest thanks the Court for considering the important foregoing issues.

Dated: August 17, 2007
New York, New York


ERIC M. AGOVINO

EX. A

Total Domain Names on the eNom Platform: **9,384,029**

[Apply for a reseller account](#) | [log-in](#)

[whois](#) | [help](#)



powering the domain name industry

» DOMAINS » **whois**

Our WhoIs (Who Is?) page lets the public see information about the owner (the "registrant") of a particular domain name as well as other information about the domain name. Some of this information is maintained by eNom (the "registrar") and some is maintained by the "registry". Only names that are registered by eNom (the "registrar") appear here. Names that are maintained by other registrars will not show up in our WhoIs, even though they are already registered (i.e. taken). You can [see if a name is already taken here](#).

Access to eNom's Whois information is for informational purposes only. eNom makes this information available "as is," and does not guarantee its accuracy. The compilation, repackaging, dissemination or other use of eNom's Whois information in its entirety, or a substantial portion thereof, is expressly prohibited without the prior written consent of eNom. By accessing and using our Whois information, you agree to these terms.

WhoIs Results for **lexipro.com**

Contact Type Registrant

Organization Name:

First Name: mcse

Last Name: braindumps

Address 1: 7800 1st ST N

Address 2: St. Petersburg,florida,US 33702

City: NA

StateProvince:

PostalCode:

Country: US

Phone: +1.8777391895

Fax:

EmailAddress: leif@properhosting.com

Contact Type Administrative

Organization Name: St. Petersburg

First Name: 7800

Last Name: 1st ST N

Address 1: florida,

Address 2:

City: NA

StateProvince:

PostalCode:

Country: US

Phone: NA

Fax:

EmailAddress: NA

Contact Type Billing

Organization Name:**First Name:** Leif**Last Name:** Nissen**Address 1:** 7800 1st st N**Address 2:****City:** St Petersburg**StateProvince:** FL**PostalCode:** 33702**Country:** US**Phone:** +1.8777391895**Fax:****EmailAddress:** enom@properhosting.com

Contact Type Technical

Organization Name: St. Petersburg**First Name:** 7800**Last Name:** 1st ST N**Address 1:** florida,**Address 2:****City:** NA**StateProvince:****PostalCode:****Country:** US**Phone:** NA**Fax:****EmailAddress:** NA

Other Information

nameserver: NS1.PARKED.COM
NS2.PARKED.COM**updated-date:** 2007-05-23 20:10:03.000**created-date:** 2002-01-25 18:14:35.000**registration-expiration-date:** 2012-01-25 18:14:35.000**status:** registrar-lock**domain:** lexipro.com

Enter the domain name for which you would like to check information.
(i.e. "example.com")

search

[register a domain name](#) | [my domains](#) | [transfer a domain](#) | [my transfers](#) | [host a domain](#) | [new extensions \(TLDs\)](#) | [international domains \(IDNs\)](#) | [pricing](#) | [global edit](#) | [register name server](#) | [push a domain](#)

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EX. B

The United States of America



CERTIFICATE OF REGISTRATION
PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are part of this certificate.

This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.



A handwritten signature in black ink, appearing to read "James H. Moore".

Director of the United States Patent and Trademark Office

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

Reg. No. 2,684,432

United States Patent and Trademark Office

Registered Feb. 4, 2003

**TRADEMARK
PRINCIPAL REGISTER**

LEXAPRO

FOREST LABORATORIES, INC. (DELAWARE
CORPORATION)
909 THIRD AVENUE
NEW YORK, NY 10022

FIRST USE 9-5-2002; IN COMMERCE 9-5-2002.

SN 76-184,942, FILED 12-22-2000.

FOR: PHARMACEUTICAL PREPARATIONS,
NAMELY, ANTIDEPRESSANTS, IN CLASS 5 (U.S.
CLS. 6, 18, 44, 46, 51 AND 52).

KELLEY WELLS, EXAMINING ATTORNEY

EX. C



FAX: 212-224-6740

DIRECT LINE: 212-224-6633

August 1, 2007

Via Electronic Mail (leif@properhosting.com).

Leif Nissen
7800 1st St. N.
St. Petersburg, FL 33702

Dear Mr. Nissen:

I serve as Chief Intellectual Property Counsel for Forest Laboratories, Inc. ("Forest"). It has come to our attention that you are making improper and unauthorized use of Forest's registered trademark LEXAPRO[®] ("the Mark") in your domain name www.lexipro.com. This use egregiously violates Forest's intellectual property rights.

Forest has made uninterrupted and continuous use of the Mark in commerce since 2002, and owns a federal trademark registration for "pharmaceutical preparations, namely, antidepressants" (Reg. No. 2,684,432). Forest's rights to the Mark are therefore very strong.

Your use of this domain name is entirely improper. Your domain name is similar in sight, sound, and meaning to the Mark. Therefore, your domain name is likely to confuse consumers to falsely believe that your website is affiliated with Forest or the Mark, thereby attracting users to your website. At the very least, your domain name is likely to cause consumer confusion that constitutes federal and state trademark infringement.

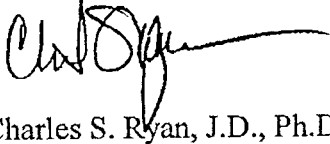
Worse, your domain name contains links to web sites that are improperly offering for sale what they claim is LEXAPRO[®], which violates Forest's intellectual property rights, as well as federal and state laws.

For at least the foregoing reasons, Forest demands that you immediately cease and desist from:

- (1) Utilizing any feature of the Mark in your domain name(s);
- (2) Using any designation, mark, term, or title confusingly similar to the Mark;
- (3) Using any mark in a manner so as to dilute the distinctive qualities of the Mark.

If we do not receive your written agreement to the foregoing within ten business days, Forest will take all appropriate actions to protect its interests. This letter is sent without prejudice to Forest's rights and claims, all of which are expressly reserved.

Sincerely,

A handwritten signature in black ink, appearing to read 'Charles S. Ryan', with a long horizontal flourish extending to the right.

Charles S. Ryan, J.D., Ph.D.
Chief Intellectual Property Counsel

EX. D

From: nissen.leif@gmail.com [mailto:nissen.leif@gmail.com] **On Behalf Of** Leif Nissen
Sent: Wednesday, August 01, 2007 7:57 PM
To: Agovino, Eric
Subject: Re: CEASE AND DESIST

Eric,

I had this domain before the product Lexapro.com <<http://lexapro.com/>> even existed. I chose to take down the site later and put it up on a parked.com <<http://parked.com/>> account. They choose what ads show up on the site. I have also had recent interest from other companies, some offshore to purchase the domain from me.

I do, however, understand your situation and I'm willing to sell you the domain for \$10,000.

Leif

On 8/1/07, **Agovino, Eric** <Eric.Agovino@frx.com> wrote:

Dear Mr. Nissen:

Attached is a cease and desist letter relating to the domain name WWW.LEXIPRO.COM <<http://WWW.LEXIPRO.COM>> from Dr. Charles Ryan, Chief Intellectual Property Counsel at Forest Laboratories, Inc.

Sincerely,

Eric M. Agovino
Patent Counsel
Forest Laboratories, Inc.
909 Third Avenue
New York, New York 10022
212.224.6925 (p)

212.750.9152 (f)

eric.agovino@frx.com <<mailto:eric.agovino@frx.com>>

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EX. E

LAW OFFICES OF CHRISTOPHER SERBAGI

ATTORNEYS AT LAW

488 MADISON AVENUE

SUITE 1120

NEW YORK, NEW YORK 10022

(212) 593-2112

FACSIMILE: (212) 308-8582

c.serbagi@att.net

August 14, 2007

Via Federal Express and Electronic Mail

Parked.com

5505 W. Gray Street

Tampa, Florida 33609-1007

Re: Parked.Com's Improper Use of the Domain Name "lexipro.com"

Dear Sir or Madame:

This firm is intellectual property and litigation counsel to Forest Laboratories, Inc. ("Forest"). As you may know, Forest manufactures, markets, and sells a variety of prescription medicines for a variety of conditions throughout the United States. It has come to our attention that Parked.Com ("Parked") has employed the domain name "lexipro.com" on its hosting servers and re-directed those interested in Forest's LEXAPRO drug to on-line pharmacies and to others who are not associated or sponsored by Forest. For the reasons discussed below, we demand that Parked immediately remove the domain name "lexipro.com" and any derivation or similar name from its hosting servers.

Forest has made uninterrupted and continuous use of the mark LEXAPRO since 2002 and owns a federal trademark registration for the mark for "pharmaceutical preparations, namely antidepressants" (Reg. No. 2,684,432). Forest filed an intent-to use application for the mark LEXAPRO on December 22, 2000, which means that Forest is entitled to presumptive use from that date forward. Forest's rights to the LEXAPRO mark are longstanding, strong and incontestable pursuant to 15 U.S.C. § 1065. Indeed, Forest's LEXAPRO mark has become "famous" and is therefore entitled to an elevated degree of protection.

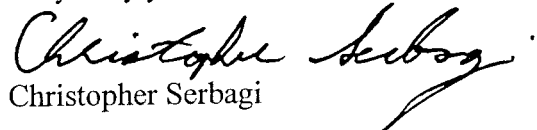
Our research reveals that Parked has provided its services to Leif Nissen in connection with his improper use of "lexipro.com." We understand that Mr. Nissen has made no legitimate use of this site and has employed Parked to pay him for those who click on advertisements that Parked directs. This mutual commercial arrangement is entirely improper and is in violation of numerous state and federal laws because, inter alia, it causes consumer confusion in the marketplace and directs consumers to sites that are not only unauthorized by Forest, but who compete with Forest and are making

CHRISTOPHER SERBAGI, ESQ.

unauthorized sales of LEXAPRO from foreign countries. Parked has obviously financially benefited from this arrangement at Forest's expense.

We have contacted Mr. Nissen and he has refused to cease his use of the "lexipro.com" domain name and has refused to direct Parked to do the same. This unauthorized use has left Forest with no option but to pursue its legal remedies as provided at law, including treble damages and attorney's fees. If Parked would like to resolve this matter without litigation, it must immediately remove "lexipro.com" from its servers and discontinue any relationship with Mr. Nissen in connection with that name. If we do not hear from you within five business days from the date of this letter, Forest will pursue all appropriate legal remedies.

Very truly yours,


Christopher Serbagi

Accepted and Acknowledged

Parked.Com

By: _____
Name:
Title:

EX. F

Fri, Aug 17, 2007 5:46 PM

Subject: Trouble Ticket #14452 Has Been Responded To

Date: Tuesday, August 14, 2007 8:51 PM

From: parked.com Trouble Ticket System <partnersupport@parked.com>

Reply-To: <partnersupport@parked.com>

To: <c.serbagi@att.net>

Conversation: Trouble Ticket #14452 Has Been Responded To

Thank you for using the parked.com Trouble Ticket System. The following response is from a qualified parked.com customer support team member:

Date: 08/14/07 07:50pm

From: donny

Christopher Serbagi,
We have banned the domain lexipro.com from our system.

Donny Simonton
Parked.com

Thank you again for using parked.com. We hope this response has sufficiently answered your question.

Please feel free to use the frequently asked questions page at <http://www.parked.com/account/help/faq/> to find the answer to your questions.

EX. G

Fri, Aug 17, 2007 5:48 PM

Subject: FW: CEASE AND DESIST

Date: Wednesday, August 15, 2007 2:32 PM

From: Agovino, Eric <Eric.Agovino@frx.com>

To: Christopher Serbagi <c.serbagi@earthlink.net>

Conversation: CEASE AND DESIST

From: nissen.leif@gmail.com [mailto:nissen.leif@gmail.com] **On Behalf Of** Leif Nissen

Sent: Tuesday, August 14, 2007 9:08 PM

To: Agovino, Eric

Subject: Re: CEASE AND DESIST

Well, you've gotten parked.com <<http://parked.com>> to stop running ads on the site. Being that you're being so reasonable, maybe I'll sell it to a webmaster in Pakistan who will put a porn site on it. Let's start being reasonable here before I do something stupid. There are 10+ domain parking companies so we can keep going that route before I get so upset I sell it offshore if that's really the tactic you want to take.

Leif

On 8/1/07, **Leif Nissen** <leif@properhosting.com> wrote:

Eric,

I had this domain before the product Lexapro.com <<http://lexapro.com/>> even existed. I chose to take down the site later and put it up on a parked.com <<http://parked.com/>> account. They choose what ads show up on the site. I have also had recent interest from other companies, some offshore to purchase the domain from me.

I do, however, understand your situation and I'm willing to sell you the domain for \$10,000.

Leif

On 8/1/07, **Agovino, Eric** <Eric.Agovino@frx.com
<mailto:Eric.Agovino@frx.com> > wrote:

Dear Mr. Nissen:

Attached is a cease and desist letter relating to the domain name
WWW.LEXIPRO.COM <<http://www.lexipro.com/>> from Dr. Charles Ryan, Chief
Intellectual Property Counsel at Forest Laboratories, Inc.

Sincerely,

Eric M. Agovino
Patent Counsel
Forest Laboratories, Inc.
909 Third Avenue
New York, New York 10022
212.224.6925 (p)

212.750.9152 (f)

eric.agovino@frx.com <mailto:eric.agovino@frx.com>

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EX. H

| Lexipro | MP3s | Loans | Jobs | Music | Internet | Flowers | Shopping | Fitness | Education |

LEXIPRO.COM

 Language:

For Lexipro try these sponsored results:

Weight gain solution.

There is a reason and solution for antidepressant weight gain.

www.theroadback.org

Side-effects of medicine

Your immune system is weakened Sulfa, nsaid, ibuprofen, advil

www.stevensjohnsonsyndrome.org

Antidepressant Help

Safe, Natural, Step-by-Step Plan to Withdraw Comfortably. Free Support!

www.labelmesane.com

Side effects

Looking for Side effects? Find Side effects Here.

www.clinical-depression.net

ENABLEX® (darifenacin)

It's Time to Take Control of Your Overactive Bladder - Learn How!

ENABLEX.com

Zelnorm Heart Attack Risk

IBS drug linked to heart attack and stroke. Seeger Weiss LLP.

www.lawyerseek.com/Zelnorm/

Anxiety Herbal Remedy

PureCalm is clinically formulated, proven effective, safe and natural.

www.nativeremedies.com

SSRIs & PPHN in Newborns

If you took an SSRI while pregnant You should know your legal rights

www.ssri-birthdefects.com/

Drug Dosages Community

Online Health Community. Join & Get More Info on Health Related Topics.

www.ClinicalHealth.USNews.com

Wholesale Drugs

Save Over 80% On Prescriptions We Beat All Competitors' Price

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- Loans
- Jobs
- Music
- Internet
- Flowers
- Shopping
- Fitness
- Education

www.canadadrugpharmacy.com

| Lexipro | MP3s | Loans | Jobs | Music | Internet | Flowers | Shopping | Fitness | Education |

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